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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,076	10/29/2003	You Lung Chen	25040-1100	5940

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EXAMINER

PADEN, CAROLYN A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/696,076	Applicant(s) CHEN ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) 1-37,63,64,75 and 76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-62 and 65-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3-29-04</u> . | 6) <input type="checkbox"/> Other: _____ |

Applicant's election with traverse of III in the reply filed on May 9, 2006 is acknowledged. The traversal is on the ground(s) that Groups II and IV should be considered together because both inventions are directed to drinking straws. Examiner agrees to withdraw the requirement for restriction between groups III and IV because applicant elected to prosecute drinking straws as the species of group III. Applicant argues that the additional search of coated confectionary articles, spoons, plastic structures and tongue depressors would not create an undue burden. This is not found persuasive because the range of species claimed crosses at least three classes and is not even limited to food items. Accordingly, claims 63 and 64 are withdrawn from consideration.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38, 39, 41, 45, 47 & 65-67 are rejected under 35 U.S.C. 102(b) as being anticipated by Jabara (AU 32375/97).

At example 6, Jabara discloses an edible composition containing starch, orange flavor and colorant, mineral salts, ascorbic acid, bicarbonate and powdered sugar. Ascorbic acid is the acid used in this product. The application step requiring heat is a process limitation, carrying no weight in a product claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-45 & 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jabara (AU 32375/97).

The claims appear to differ from Jabara in the recitation of the use of the specific acid of claim 40 and in the recitation of the concentration of ingredients per straw. But to vary the acid and the acid concentration would have been up to the skilled flavorist who desires to create a beverage with a sour taste.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-62 & 65-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiorelli (3,824,322).

Fiorelli discloses a hollow tube that is coated with flavoring of lemon juice, citric acid, corn syrup solids (see column 6, example). The solution is applied by dissolving the ingredients in a volatile solvent and then heating for application to the stirrer. The monoglyceride glycerol monostearate is a selected ingredient at column 6, lines 42-43. Although the example does not specifically relate to a straw, the concept of applying coating to a straw is shown at column 1, lines 55-60. It is appreciated that the specific amount of acid added to the straw is not mentioned. But it would have been obvious to adjust the acid content of the straw according to the extent of sourness desired. Although a double coating is not mentioned, it would have been obvious to modify the flavoring in the straw by using a bland coating and a second flavored coating. It is appreciated that a plasticizer is

not mentioned but it would have been obvious to include glycerin, sorbitol, maltitol or mannitol in the stirrer composition of Fiorelli as a bulking agent or as a sweetener.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN
PRIMARY EXAMINER

7-20-06
1761